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BENEFIT CORPORATION

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BEFORE THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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| <p>HEARING IN THE MATTER OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND UNITED STATES BUREAU OF RECLAMATION REQUEST FOR A CHANGE IN POINT OF DIVERSION FOR CALIFORNIA WATERFIX</p> | <p>PREPARED DIRECT TESTIMONY OF ANDRIA VENTURA ON BEHALF OF THE ENVIRONMENTAL JUSTICE COALITION FOR WATER</p> |
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I, Andria Ventura, Toxics Program Manager for Clean Water Action and Clean Water Fund, do hereby declare:

I. INTRODUCTION

1. The purpose of my prepared direct testimony is to render the opinion that the San Francisco Bay is currently impaired for the beneficial uses of wildlife habitat and sports fishing by mercury and other bioaccumulative contaminants; California's State Water Resources Control Board has adopted definitions of new beneficial uses to protect non-tribal subsistence fishers, tribal subsistence fishers, and tribal cultural uses; that subsistence fishing is minimally studied, but is occurring in the Bay leaving it subject to being designated as being impaired for these fishing practices as well; that this set of circumstances evinces a public interest in the enjoyment of the aforementioned beneficial uses; and that any negative impacts to the enjoyment of said beneficial uses from the Delta Tunnels Project are contrary to the public interest and should weigh against approving the Petitioners' water rights change petition.

2. As Toxics Program Manager, I, Andria Ventura have been an active stakeholder in the development of mercury TMDLs (Total Maximum Daily Loads) for San Francisco Bay, the San Joaquin Delta, and the Guadalupe River watershed, as well as TMDLs for pesticides and polychlorinated biphenyls (PCBs) in the Bay. Total Maximum Daily Load (TMDL) is a regulatory term in the U.S. Clean Water Act, describing a plan for restoring impaired waters that identifies the maximum amount of a pollutant that a body of water can receive, while still meeting water quality standards.

3. I authored the report *Cleaning Up California's Polluted Waters: An Action Plan to Improve the TMDL Process*. One of the primary findings of that report was that the lack of recognition of subsistence fishing as a beneficial use of many impacted waterways resulted in the failure of regional pollution control and remediation plans from protecting low income communities and communities of color that rely on fishing from polluted waters out of economic need and/or cultural tradition. I have worked for over a decade, most actively since 2012, to achieve a statewide definition and State recognition of subsistence fishing as a beneficial use and am now concentrating on ensuring that appropriate water bodies are designated as supporting this and the tribal beneficial uses.

4. My testimony is based on my involvement in the establishment of subsistence fishing as a recognized beneficial use of waters in California and my current work to designate the San Francisco Bay and other waters as supporting this use, as well as tribal subsistence fishing and cultural uses.

II. SUMMARY OF TESTIMONY

5. In my testimony, I first summarize my understanding of and involvement in the ultimate recognition of non-tribal subsistence fishing, tribal subsistence fishing, and tribal cultural uses as beneficial uses of California waters because of the need to protect the most vulnerable populations from exposure to mercury and other bioaccumulative contaminants in water.

6. I then proceed to describe how the SWRCB adopted definitions and recognized these beneficial uses as being in the public interest.

7. Finally, with reference to the testimony of other witnesses, whose testimony addresses negative impacts from the Delta Tunnels Project, I argue that those negative impacts, in so far as they negatively impact the enjoyment of the aforementioned beneficial uses, are against the public interest and, as such, weigh against approving the subject water rights change petition.

III. STATE WATER BOARD'S ADOPTION OF FISHING BENEFICIAL USE EVINCES PUBLIC INTEREST IN TRIBAL, CULTURAL, AND SUBSISTENCE FISHING

8. It is my understanding that the State Water Resources Control Board established beneficial uses for non-tribal subsistence fishing, tribal subsistence fishing, and tribal cultural uses, with extensive public input, as a means of protecting the public health and safety of all Californians, particularly those most vulnerable to the impacts of mercury and other pollutants.

9. It is further my understanding that, as stakeholders and regional boards review contaminants in California waterways, that many of them, including San Francisco Bay and the Delta, will be designated as supporting the newly recognized beneficial uses.

10.

11. Why is the beneficial use designation necessary? Mercury is negatively impacting the beneficial uses of many waters of the state by making fish unsafe for human and wildlife consumption. Although mercury occurs naturally in the environment, concentrations of mercury exceed background levels because of human activities. Gold and mercury mining practices are the predominant sources of legacy mercury pollution, though contemporary sources include air deposition, industrial and municipal wastewater discharges, and urban run-off. The largest source of the highly contaminated San Francisco Bay is the Central Valley, where rivers carry mercury from remote regions through the San Joaquin Delta and into the Bay.

[https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/sfbaymercury/mdl.shtml,

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/sfbaymercury/sr080906.pdf]

12.

13. Here, I provide a summary of State Water Board's actions with respect to the subject beneficial uses:

14. On May 2, 2017, the State Water Resources Control Board adopted Resolution 2017-0027, which approved "Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions." Resolution 2017-0027 provides a consistent regulatory approach throughout the state by setting mercury limits to protect the beneficial uses associated with the consumption of fish by both people and wildlife. Additionally, the State Water Board established three new beneficial use definitions for use the State and Regional Water Boards in designating Tribal Traditional Culture (CUL), Tribal Subsistence Fishing (T-SUB), and Subsistence Fishing (SUB) beneficial uses to inland surface waters, enclosed bays, or estuaries in the state. The State Water Board approved one new narrative and four new numeric mercury objectives to apply to those inland surface waters, enclosed bays, and estuaries of the state that have any of the following beneficial use definitions: COMM, CUL, T-SUB, WILD, MAR, RARE, WARM, COLD, EST, or SAL, with the exception of waterbodies or waterbody segments with site-specific mercury objectives. These provisions will be implemented through National Pollution Discharge Elimination System permits, water quality certifications, waste discharge requirements (WDRs) and waivers of WDRs. (Source: https://www.waterboards.ca.gov/water_issues/programs/mercury/.)

15. With respect to the timeline for the development of the subject beneficial uses, the State Water Board prepared a graphical timeline, which recounts that Mercury Objectives CEQA Scoping began in February 2007, Reservoir Program and Mercury Objectives CEQA Scoping began in March 2012, Update on Statewide Mercury Program to Board Members occurred in April 2013, Focus Group Meetings took place between February and October 2014, meanwhile, "Tribes Fish Use" Presentation occurred in September 2014, Scientific Peer Review of Mercury Objectives occurred in September 2016, the Public Comment Period on Mercury Objectives ran from January to February 2017, and the State Water Board Meeting and Adoption Hearing occurred in May 2017. A true and accurate copy of the document to which I refer in my testimony as, "timeline for the development of the subject beneficial uses," is attached to my testimony as Exhibit 22 and available online at: https://www.waterboards.ca.gov/water_issues/programs/mercury/images/hg_prov_time3b.jpg (last visited on November 29, 2017).

16. The State Water Board adopted resolution 2016-0011 during its regularly noticed public hearing on February 16, 2016, which I attended in person in Sacramento, California, a true and accurate copy of which is attached to my testimony as Exhibit 23 and available online at:

https://www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/docs/bu_res_2016_0011.pdf (last visited on November 29, 2017).

17. The State Water Board published a beneficial use staff presentation on its website, a true and accurate copy of which is attached to my testimony as Exhibit 24 and available online at: https://www.waterboards.ca.gov/water_issues/programs/mercury/docs/hg_workshop_2.pdf (last visited on November 29, 2017).

18. The State Water Board published a fact sheet on the beneficial use on its website, a true and accurate copy of which is attached to my testimony as Exhibit 25 and available online at: https://www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/docs/bu_factsheet.pdf (last visited on November 29, 2017).

19. The State Water Board published a media release on “Mercury Limits for Water Bodies” on its website, a true and accurate copy of which is attached to my testimony as Exhibit 26 and available online at: https://www.waterboards.ca.gov/press_room/press_releases/2017/pr050317_mercury_limits.pdf (last visited on November 29, 2017).

20.

21. The State Water Board adopted resolution 2017-0027 at its regularly noticed public hearing on May 1, 2017, which I attended in person in Sacramento, California, a true and accurate copy of which is attached to my testimony as Exhibit 27 and available online at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0027.pdf (last visited on November 29, 2017).

22. The State Water Board published a document it titled, “Final Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California—Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions” on its website, a true and accurate copy of which is attached to my testimony as Exhibit 28 and available online at: https://www.waterboards.ca.gov/water_issues/programs/mercury/docs/hg_prov_final.pdf (last visited on November 29, 2017).

23. The Office of Administrative Law (OAL) approved the regulatory actions undertaken through the State Water Board’s adoption of Resolution 2017-0027 in a notice, dated, June 28, 2017, and published by the State Water Board on its website, a true and accurate copy of which is attached to my testimony as Exhibit 29 and available online at: https://www.waterboards.ca.gov/water_issues/programs/mercury/docs/hg_oal_approval.pdf (last visited on November 29, 2017).

24. The United States Environmental Protection Agency (US EPA) approved the regulatory actions undertaken through the State Water Board's adoption of Resolution 2017-0027 in a letter dated, July 14, 2017, and published by the State Water Board on its website, a true and accurate copy of which is attached to my testimony as Exhibit 30 and available online at:

https://www.waterboards.ca.gov/water_issues/programs/mercury/docs/ca_hg_approval_letter_with_enclosures_signed_071417.pdf (last visited on November 29, 2017).

25. The State Water Board maintains materials relevant to mercury and the subject beneficial uses on its website, a true and accurate copy of which is attached to my testimony as Exhibit 31 and available online at: https://www.waterboards.ca.gov/water_issues/programs/mercury/ (last visited on November 29, 2017).

26. It is my opinion, based on the foregoing, that the State Water Board's establishment and adoption of the aforementioned beneficial uses is authoritative evidence that the enjoyment of such uses is in the public interest.

27. As below, it is my further opinion that decisions related to the California Water Fix must take into account the potential impacts of the Project on water quality and contamination in fish that could exacerbate or create new risk to subsistence fishing communities and tribal cultural uses, including in the Delta and San Francisco Bay.

IV. THE NEGATIVE IMPACTS OF TUNNELS PROJECT TO TRIBAL, CULTURAL, AND SUBSISTENCE FISHING ARE CONTRARY TO THE PUBLIC INTEREST

28. I have reviewed the prepared direct testimony of Dr. Fraser Shilling, dated and submitted in this proceeding on November 30, 2017, which recounts negative impacts from the Delta Tunnels Project to fish health and those who consume them, with an emphasis on the impacts the Project would have with respect to mercury in fish and, again, those who consume them.

29. While addressing mercury pollution is both daunting and complex, mercury or methylmercury TMDLs for the Bay and its contributing watersheds - the Delta and Guadalupe River - have fallen short in ensuring that the most vulnerable California residents will be protected. All three plans set water quality and fish tissue goals to protect sports fishers who consume minimal amounts of contaminated fish on a weekly basis. Subsistence fishers, who often rely on self-caught fish for basic sustenance out of economic need and/or cultural tradition are not included in the cleanup goals, meaning that remediation can and will likely stop short of bringing mercury or other bioaccumulative contamination levels down enough to protect what are largely low income communities and communities of color.

30. It is my opinion that the negative impacts of the Tunnels Project to tribal and non-tribal subsistence fishing and tribal cultural uses are contrary to the aforementioned beneficial use and the public interest in its full enjoyment, which its very establishment evinces.

VI. CONCLUSION

In conclusion, the State Water Board's recognition of non-tribal subsistence fishing, tribal subsistence fishing, and tribal cultural uses as beneficial uses of California waterways demonstrates that enjoyment of and activities undertaken consistent with said beneficial uses are in the public interest. It provides the necessary tools to ultimately ensure that all Californians, including the most vulnerable to exposure to contamination, are protected and enjoy equitable access to and use of state waters. As the effort to identify waterways that support these beneficial uses and formally designate them as such move forward, it is a matter of environmental justice that water decisions related to the tunnels of the California Water Fix take into account their potential negative impacts on fish contamination and subsistence fishers. Anything else is social and environmental injustice and contrary to the public interest and the public trust.

I declare that the foregoing is true and correct. Thank you for the opportunity to present this testimony.

Signature:

A handwritten signature in cursive script that reads "Andria Ventura".

Printed name: Andria Ventura

Date: November 30, 2017

VII. STATEMENT OF QUALIFICATIONS

As Toxics Program Manager, I, Andria Ventura have been an active stakeholder in the development of mercury TMDLs for San Francisco Bay, the San Joaquin Delta, and the Guadalupe River watershed, as well as TMDLs for pesticides and PCBs in the Bay.

I authored the report, *Cleaning Up California's Polluted Waters: An Action Plan to Improve the TMDL Process*. One of the primary findings of that report was that the lack of recognition of subsistence fishing as a beneficial use of many impacted waterways resulted in the failure of regional pollution control and remediation plans from protecting low income communities and communities of color that rely on fishing from polluted waters out of economic need and/or cultural tradition. I have worked for over a decade, most actively since 2012, to achieve state definition and recognition of subsistence fishing as a beneficial use and am now concentrating on ensuring that appropriate water bodies are designated as supporting this and the tribal beneficial uses.